



**Lombelo v Chief of Defence Forces & 2 others (Civil Appeal (Application)
E240 of 2025) [2025] KECA 2254 (KLR) (19 December 2025) (Ruling)**

Neutral citation: [2025] KECA 2254 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E240 OF 2025
AO MUCHELULE, JA
DECEMBER 19, 2025**

BETWEEN

BENJAMIN CHELANG'A LOMBELO APPLICANT

AND

THE CHIEF OF DEFENCE FORCES 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTION 3RD RESPONDENT

*(Being an application under Rule 49(5) of the Court of
Appeal Rules 2022, in HCConst. Petition No. E220 OF 2021)*

RULING

1. The applicant, Benjamin Chelang'a Lombelo, states that he was aggrieved by the decision of the High Court which was rendered on 4th February 2025 that dismissed his cause against the respondents, the Chief of Defence Forces, the Attorney General and the Director of Public Prosecutions. The case followed his discharge from the Kenya Defence Forces in 2014 wherein he was serving in the rank of Corporal. He filed his appeal before this Court on 2nd April 2025. On 5th May 2025 he filed a notice of motion seeking that the appeal be certified as urgent. I declined to certify the appeal as urgent, which led to his moving me under Rule 49(5) of this Court's Rules for interparte hearing on the question of urgency.
2. The main ground is that the applicant, as Corporal, was required to retire at age 54. He will be 48 in January 2026. If this appeal takes 5 years, which he says was the period his case took before the High Court, the retirement age will have been reached. The second reason is that he has school going children who are being affected by his discharge, and that is why he wants his appeal to be heard on priority.
3. The application did not receive the respondents' response.



- 4. To begin with, the request for urgency was not made along with the appeal. There was no explanation why it took the appellant about one month for him to realise that the appeal should be heard on priority.
- 5. Secondly, it should be borne in mind that, because this Court has insufficient number of Judges, it is not possible to hear and determine appeals and applications real-time. This is why any new application or appeal that is filed has to queue, and it is fair that only in compelling and exceptional cases should a party be allowed to jump the queue.
- 6. This is why an applicant, in seeking to have his appeal or application heard in priority, must file an affidavit in support of the request setting forth, in a comprehensive manner, the reasons why the matter should be heard without delay. He has to demonstrate that if the matter were to wait, he would be put in an irreversible position, beyond what the other parties in similar circumstances would suffer.
- 7. The Court operates on the basis that, all parties are equal and each is entitled to expeditious disposal of his case. It is fair and just that old matters receive priority when compared to new matters. Where there is no overriding public interest or circumstances, all parties must wait for their day depending on when they filed their matters. There should be no preferential treatment when it comes to when a matter before the Court should be heard.
- 8. Having considered the reference, and being guided by the decisions of this Court, including *Mary Njeri Njoroge -vs- George Munene Ndwati & Another*, Civil Appeal (Application) No. E903 of 2022 [2025] KECA 82 (KLR), I decline to revise my order which found that the matter was not urgent.

DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF DECEMBER 2025

A. O. MUCHELULE

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JUDGE OF APPEAL

I certify that this is a true copy of the original

SIGNED

DEPUTY REGISTRAR.

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